

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

**NANCY K. HAMMOND, on behalf of
herself and for all present and former
employees similarly situated,**

Plaintiffs,

v.

LOWE'S HOME CENTERS, INC.,

Defendant.

CIVIL ACTION

No. 02-2509-CM

ORDER

Plaintiff Nancy Hammond filed this lawsuit on October 1, 2002, on behalf of herself and other similarly situated employees of defendant Lowe's Home Centers, Inc., under section 16(b) of the Fair Labor Standards Act (FLSA), 29 U.S.C. § 216(b). Plaintiffs sought to recover unpaid overtime compensation, unpaid minimum wage compensation, liquidated damages, attorney fees, and costs. On November 4, 2003, plaintiffs filed their First Amended Complaint, alleging that defendant violated the FLSA and asserting a breach of contract claim. Although the court's scheduling order had set a deadline of June 1, 2003 for filing a Rule 23 class certification motion, the court extended the Rule 23 deadline to August 27, 2003. Plaintiffs then filed a motion for class certification (Doc. 50) on August 27, 2003, which the court denied on March 17, 2004.

On August 22, 2005, plaintiffs filed a second motion for Rule 23 class certification (Doc. 185). Plaintiffs did not request leave to file the motion out of time. They justify this late filing by stating that "[n]o

restriction exists on filing class motions in the last “Report of Parties Planning Conference,” dated September 9, 2004, in any prior planning report, or in any other orders entered in this case.” Plaintiffs argue that the court’s March 17, 2004 order contained no restriction or comment about filing a new class certification motion, and claim that defendant’s “contemptuous behavior caused the numerous extensions of time in the case, and if any reason is needed, this is the explanation for Class Plaintiffs’ delay in filing its present motion for class certification.” Defendant filed a Motion to Strike Plaintiff Class Representatives’ Motion for Class Certification, or in the Alternative, for an Extension of Time to Respond (Doc. 188), arguing that the court should strike plaintiffs’ August 2005 motion because it was filed out of time, among other reasons.¹

Plaintiffs’ motion is untimely and not properly before the court. The deadline for filing a class certification motion passed nearly two years before plaintiffs filed the instant motion. The court did not need to establish another class certification deadline in any later scheduling orders because the deadline had already passed, and plaintiffs had filed a motion. Moreover, the court notes that the Local Rule governing the filing of class actions specifies that motions for class certification shall be filed within ninety days after the filing of the complaint, unless that period is extended by court order. *See* D. Kan. R. 23.1. In this instance, the court will not accept plaintiffs’ excuse that defendant has delayed proceedings in this lawsuit. The case

¹The court questions whether a motion to strike was the appropriate method for defendant to get its arguments before the court. Defendant’s arguments may have been more proper in a response to plaintiffs’ motion for class certification. In any event, the untimeliness of plaintiffs’ motion for class certification is also a valid basis to deny the motion, and the court would have denied the motion as untimely if defendant had not moved to strike the motion.

is over three years old, and the time for requesting class certification has long since passed. The court will not consider plaintiffs' late motion for class certification at this time.

IT IS THEREFORE ORDERED that defendant's Motion to Strike Plaintiff Class Representatives' Motion for Class Certification, or in the Alternative, for an Extension of Time to Respond (Doc. 188) is granted. Plaintiff Class Representatives' Motion for Class Certification (Doc. 185) is hereby stricken from the record and will not be considered by the court.

Dated this 6th day of February 2006, at Kansas City, Kansas.

s/ Carlos Murguia
CARLOS MURGUIA
United States District Judge